diction also "includes" supplemental jurisdiction under section 1367. Pet. App. 6a. That is, the Ninth Circuit believed that because an action seeking a determination of nondischargeability involves some of the same factual questions as an action seeking judgment on the underlying nondischargeable debt, the latter proceeding is within section 1367's grant of jurisdiction over "all other claims that are so related to claims in the action . . . that they form part of the same case or controversy." *Id.* (quoting 28 U.S.C. § 1367).[7]

Like the Ninth Circuit, the Second Circuit has expressly held that bankruptcy courts may exercise supplemental jurisdiction under section 1367. *See In re Lionel Corp.*, 29 F.3d at 92. Similarly, in concluding that bankruptcy courts have jurisdiction to enter judgment on nondischargeable debts, the Fourth, Sixth, and Eighth Circuits have invoked a supplemental jurisdiction rationale, reasoning that the underlying debt shares a factual nexus with the question of the debt's nondischargeability. *See Longo* v. *McLaren* (*In re McLaren*), 3 F.3d 958, 966 (6th Cir. 1993); *Abramowitz* v. *Palmer*, 999 F.2d 1274, 1279 (8th Cir. 1993); *Hall* v. *Davenport*, 76 F.3d 372, 1996 WL 34674 at *2 (4th Cir. 1996) (unpublished); *see also* Brubaker, 41 Wm. & Mary L. Rev. at 918; Pet. 15 & n.7.

By contrast, the Third, Fifth, Seventh, and Eleventh Circuits have expressly rejected the contention that section 1334 permits the exercise of supplemental jurisdiction over matters that share a factual nexus with bankruptcy proceedings, yet can have no effect on the estate. As the Fifth Circuit explained, "Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and 'the exercise of ancillary and pendent jurisdiction by bankruptcy courts could subsume the more restrictive "relate[d] to" and "arising in" jurisdiction, such that the lat-

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[7] That reasoning echoes the Ninth Circuit's prior decision in *Couven* v. *Kennedy* (*In re Kennedy*), 108 F.3d 1015 (9th Cir. 1997), which found jurisdiction over a claim seeking judgment on a nondischargeable debt because "it is impossible to separate the determination of dischargeability function from the function of fixing the amount of the non-dischargeable debt." *Id.* at 1018.

ter would be rendered substantially, if not entirely, superfluous.'" *Walker*, 51 F.3d at 573 (citations omitted).[8]

Similarly, the Third Circuit has held that "the mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of" bankruptcy jurisdiction. *Bobroff*, 766 F.2d at 802 (citation omitted). Rejecting the position later adopted by the Ninth Circuit in this case, the Third Circuit specifically held that "related to" jurisdiction under section 1334(b) does *not* "mirror the principle of pendent jurisdiction." *Id.*; *accord Torkelsen* v. *Maggio* (*In re Guild & Gallery Plus, Inc.*), 72 F.3d 1171, 1181 (3d Cir. 1996). The Seventh and Eleventh Circuits have reached the same conclusion. *See Kubly*, 818 F.2d at 645; *Lemco Gypsum*, 910 F.2d at 789; Pet. 5 n.1.

Respondent's only effort to reconcile the Ninth Circuit's decision below with the contrary holdings of these other courts of appeals is to claim that, in this case, the bankruptcy court had "related to" jurisdiction over the nondischargeable debt. As demonstrated above, however, that argument rests on a mistaken premise; because the entry of judgment on a nondischargeable debt cannot affect the bankruptcy estate, it is outside the "related to" jurisdiction.

To the extent that respondent's "inherent powers" argument (Br. in Opp. 9-10) is intended to make a distinct point, it is equally unavailing. As this Court has observed, "[t]he jurisdiction of the bankruptcy courts, like that of other

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[8] Respondent argues that "*Walker* . . . spoke of the bankruptcy courts as having broad jurisdiction to hear claims relating to the bankruptcy matter, exactly the conclusion of the Ninth Circuit." Br. in Opp. 8. But, as demonstrated above, the nondischargeable debt at issue here did *not* "relate to" the bankruptcy, because it did not affect the bankruptcy estate. *Walker* expressly endorsed the governing test for "related to" jurisdiction, under which a matter is "related to" the bankruptcy *only* if its resolution could affect the estate. *See* 51 F.3d at 569. And it could not have been clearer in rejecting the notion — adopted by the Ninth Circuit here—that the bankruptcy court's section 1334 jurisdiction includes "supplemental" jurisdiction over matters that do *not* affect the estate. *See id.* at 573 ("[W]e find that the district court correctly concluded that the bankruptcy court could not exercise supplemental jurisdiction . . . .").

federal courts, is grounded in, and limited by, statute." *Celotex*, 514 U.S. at 307. If Congress has not granted bankruptcy courts statutory jurisdiction over a particular matter, bankruptcy courts cannot create it by invoking "inherent equitable powers." And while the Bankruptcy Code grants bankruptcy courts the power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," 11 U.S.C. § 105(a), that provision is not an independent source of jurisdiction. *See In re Combustion Eng'g, Inc.*, 391 F.3d 190, 225 (3d Cir. 2004); *In re Johns-Manville Corp.*, 801 F.2d 60, 63 (2d Cir. 1986); *Celotex*, 514 U.S. at 327 (Stevens, J., dissenting).[9]

Because the Ninth Circuit's express conclusion that the bankruptcy court could exercise supplemental jurisdiction was thus the only possible basis for its holding, the split of authority among the courts of appeals on that question is plainly implicated by this case.

* * *

In short, the question whether bankruptcy courts can exercise supplemental jurisdiction is squarely presented here. The conflict among the circuits on that important question regarding the scope of bankruptcy jurisdiction is clear and undisputed and will not disappear absent intervention by this Court. And, because this case presents the supplemental jurisdiction question in the context of a recurring procedural dilemma for bankruptcy courts that is of substantial importance to individual debtors, *see* Br. of Nat'l Assoc. of Consumer Bankr. Attys at 2, it is a particularly appropriate vehicle for resolution of that question.

CONCLUSION

The petition for a writ of certiorari should be granted.

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[9] Respondent's contention that the bankruptcy court has the "inherent authority" to enforce its own judgments (Br. in Opp. 9-10), is inapposite. The bankruptcy court's authority to *enforce* judgments it has validly entered is not at issue; the question is whether the bankruptcy court had jurisdiction to enter the judgment against petitioner in the first instance.

Respectfully submitted,

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IN THE

Supreme Court of the United States

ROBERT SASSON,

Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICUS CURIAE G. ERIC BRUNSTAD, JR., IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The bankruptcy jurisdiction statute, 28 U.S.C. § 1334(b), grants district courts jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases under title 11." In turn, 28 U.S.C. § 157(a) provides that district courts may refer such proceedings to "the bankruptcy judges for the district."

The general federal supplemental jurisdiction statute, 28 U.S.C. § 1367(a), grants district courts jurisdiction "in any civil action of which the district courts have original jurisdiction," over "claims that are so related to claims in the action . . . that they form part of the same case or controversy under Article III of the United States Constitution."

The question presented, which has divided the courts of appeals, is whether bankruptcy courts may exercise the general supplemental jurisdiction provided in section 1367(a) to hear claims that fall outside section 1334(b)'s more restrictive grant of jurisdiction over matters "related to" the bankruptcy case.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

INTEREST OF THE AMICUS CURIAE 1

RELEVANT STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 5

A. The Ninth Circuit's Interpretation Of The Bankruptcy Jurisdiction Statutes Creates, Rather Than Avoids, Serious Constitutional Questions. 6

B. The Decision Below Erroneously Interprets The Specific Bankruptcy Jurisdiction Statutes As Controlled By The General Supplemental Jurisdiction Statute 14

C. The Decision Below Renders The Bankruptcy Courts' "Related To" Jurisdiction Superfluous. 16

CONCLUSION 19

TABLE OF AUTHORITIES

CASES

Bobroff v. Continental Bank (In re Bobroff), 766 F.2d 797 (3d Cir. 1985) 14

Celotex Corp. v. Edwards, 514 U.S. 300 (1995) 9, 10, 11, 16, 17

Clark v. Benitez, 543 U.S. 371 (2005) 6, 7

Butler v. Clark (In re Clark), 202 B.R. 243 (Bankr. W.D. Mich. 1996) 13

In re Combustion Eng'g, Inc., 391 F.3d 190 (3d Cir. 2005) 11

Crowell v. Benson, 285 U.S. 22 (1932) 7

Dodd v. United States, 545 U.S. 353 (2005) 16

Dole Food Co. v. Patrickson, 538 U.S. 468 (2003) 16

Duncan v. Walker, 533 U.S. 167 (2001) 16

Eastport Assocs. v. City of Los Angeles (In re Eastport Assocs.), 935 F.2d 1071 (9th Cir. 1991) 9

Guidry v. Sheet Metal Workers Nat'l Pension Fund, 493 U.S. 365 (1990) 14, 18

James v. McCoy, 56 F. Supp. 2d 919 (S.D. Ohio 1998) 13

In re Johns-Manville Corp., 801 F.2d 60 (2d Cir. 1986) 11

Legal Servs. Corp. v. Velazquez, 531 U.S. 533 (2001) 7, 14

Miller v. Kemira (In re Lemco Gypsum, Inc.), 910 F.2d 784 (11th Cir. 1990) 14

Morton v. Mancari, 417 U.S. 535 (1974) 14, 18

New Rock Asset Partners, L.P. v. Preferred Entity Advancements, Inc., 101 F.3d 1492 (3d Cir. 1996) 16, 17

Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982) ..... *passim*

Pacor, Inc. v. Higgins, 743 F.2d 984 (3d Cir. 1984) 9, 16, 17

Radzanower v. Touche Ross & Co., 426 U.S. 148 (1976) 14, 15, 18

United States v. Security Indus. Bank, 459 U.S. 70 (1982) 7

In re Verdon, 95 B.R. 877 (Bankr. N.D.N.Y. 1989) 13

Walker v. Cadle Co. (In re Walker), 51 F.3d 562 (5th Cir. 1995) 13, 16, 17

Wisconsin Dep't of Indus., Labor & Human Relations v. Marine Bank Monroe (In re Kubly), 818 F.2d 643 (7th Cir. 1987) 14

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

U.S. Const. art. I ..... *passim*

U.S. Const. art. III ..... *passim*

11 U.S.C. § 105 ..... 11, 13

11 U.S.C. § 523 ..... *passim*

28 U.S.C. § 151 7

28 U.S.C. § 157 ..... *passim*

28 U.S.C. § 158 9

28 U.S.C. § 1334 ..... *passim*

28 U.S.C. § 1367 ..... *passim*

Sup. Ct. R. 37.1 2

Sup. Ct. R. 37.3(a) 1

Sup. Ct. R. 37.6 1

Fed. R. Bankr. P. 7001(6) 4

INTEREST OF THE AMICUS CURIAE

Amicus curiae G. Eric Brunstad, Jr. respectfully submits this brief in support of Petitioner's request for issuance of a writ of certiorari. Pursuant to Rule 37.3(a), all parties have consented to the filing of this brief.[1]

The undersigned *amicus* is the Macklin Fleming Visiting Lecturer of Law at the Yale Law School, where he teaches courses on bankruptcy law, domestic and international business reorganizations, secured transactions, commercial transactions, and argument and reason. He has taught at Yale since 1992, and has also taught at the Harvard Law School.

In addition to teaching, the undersigned is the current Chair of the ABA Business Bankruptcy Committee. He is also a partner with the law firm of Bingham McCutchen LLP, practicing in the areas of bankruptcy law and appeals. He is a contributing author to the Collier treatise on bankruptcy and is responsible for writing and editing multiple chapters of the treatise. He has argued matters of bankruptcy law before the Court, most recently in *Marshall v. Marshall*, no. 04-1544 (2006) (counsel of record for respondent), and *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) (counsel of record for respondent), and has participated in numerous other bankruptcy cases before the Court, including *Howard Delivery Serv. Inc. v. Zurich American Ins. Co.*, no. 05-128 (2006) (counsel of record for *amici curiae*), *Central Virginia Community College v. Katz*, 126 S. Ct. 990 (2006) (co-counsel for respondent), *Rousey v. Jacoway*, 544 U.S. 320 (2004) (co-counsel for petitioners), *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party to this dispute authored this brief in whole or in part and no person or entity, other than *amicus curiae*, made a monetary contribution to the preparation or submission of this brief. Both parties have filed letters with the Court consenting to the filing of this brief.

(2004) (counsel of record for *amicus curiae*), *Kontrick v. Ryan*, 540 U.S. 443 (2004) (co-counsel for respondent), *Lamie v. United States Trustee*, 540 U.S. 526 (2004) (co-counsel for petitioner), *FCC v. NextWave Personal Communications Inc.*, no. 01-653 (2002) (co-counsel for respondent), *Archer v. Warner*, no. 01-1418 (2002) (counsel of record for *amicus curiae*), *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000) (counsel of record for petitioner), and *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249 (1992) (associate counsel for petitioner).

The undersigned is interested in the administration of bankruptcy law, particularly matters relating to the administration and jurisdiction of the bankruptcy courts. He has studied and published articles on a variety of bankruptcy topics, including the history and evolution of bankruptcy law. The basic perspective of the undersigned is that, in order to preserve the constitutionality of the bankruptcy jurisdictional statutes, careful attention must be given to the limitations upon bankruptcy court jurisdiction enacted by Congress. Consistent with Supreme Court Rule 37.1, the purpose of this brief is to bring to the Court's attention matters that other parties do not intend to address, particularly relating to the constitutional implications of allowing bankruptcy courts to exercise supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over claims which bankruptcy courts would not otherwise have jurisdiction.

RELEVANT STATUTORY PROVISIONS

Section 1334(b) of title 28, United States Code provides: "Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to a case under title 11."

Section 157(a) of title 28, United States Code provides, in relevant part: "Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title

11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district."

Section 157(b) of title 28, United States Code provides, in relevant part: "Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, . . . and may enter appropriate orders and judgments, subject to review under section 158 of this title."

Section 157(c) of title 28, United States Code provides, in relevant part: "A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such a proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected."

Section 1367(a) of title 28, United States Code provides: "Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to the claims in the action within such original jurisdiction that they form a part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."

Section 523(a)(6) of title 11, United States Code provides, in relevant part: "A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt . . . . (6) for willful and malicious injury by the debtor to another entity or to the property of another entity."

STATEMENT

In 1988, Respondent Norman Sokoloff, individually and as trustee of the Camelot Medical Group (collectively, "Sokoloff"), obtained a $120,000 state court judgment against Petitioner

Robert Sasson ("Sasson") on a breach of contract claim. Pet. App. 22a. Sasson obtained a stay of that judgment (the "State Court Stay"), based on his agreement not to dissipate his assets. *Id.* Sasson violated the State Court Stay and satisfied the claims of creditors other than Sokoloff. *Id.* The state court then dissolved the State Court Stay and entered judgment against Sasson for $149,489.53 plus interest (the "State Court Judgment"). Pet. App. 23a. Sokoloff recorded an abstract of the State Court Judgment in April 1989, but failed to renew it and it eventually lapsed. *Id.*

In May 1989, Sasson filed a petition for relief under chapter 7 of the Bankruptcy Code. Pet. App. 23a. In the chapter 7 case, Sokoloff sought a determination that the judgment *debt* arising from the State Court Judgment was nondischargeable under 11 U.S.C. § 523(a)(6). Pet. App. 23a. Whereas the State Court Judgment arose from a breach of contract claim that was an "indisputably *dischargeable* debt," Sokoloff's complaint in the adversary proceeding alleged a separate and distinct claim against Sasson. Pet. App. 28a n.17. Sokoloff alleged that Sasson's conduct in violating the State Court Stay "constituted a willful and malicious injury" within the scope of section 523(a)(6) of the Code, giving rise to a nondischargeable debt. Sokoloff asked the bankruptcy court to enter a *new* money judgment, holding Sasson liable for willful and malicious conduct in violating the State Court Stay. Pet. App. 24a.

The bankruptcy court ruled in favor of Sokoloff. Pet. App. 24a. Rather than just determining "the *dischargeability* of [the alleged] debt," Fed. R. Bankr. P. 7001(6) (emphasis supplied); *see* 11 U.S.C. § 523(a)(6), the bankruptcy court entered a final money judgment on the merits of this new claim (the "Bankruptcy Court Judgment"), *see* Pet. App. 24a.

Sasson then sought to vacate the Bankruptcy Court Judgment, arguing that the bankruptcy court lacked subject matter jurisdiction to enter a final money judgment against him on the nondischargeable claim alleged by Sokoloff. The bankruptcy court and the United States Bankruptcy Appellate Panel of the Ninth Circuit disagreed, concluding that the

bankruptcy court had jurisdiction to "make an independent determination" on the merits of Sokoloff's alleged underlying claim that Sasson's "prepetition, postjudgment, manipulative conduct" violated the State Court Stay because that conduct was willful and malicious and therefore "arises under" section 523(a)(6) of the Bankruptcy Code. Pet. App. 29a-30a.

The Ninth Circuit affirmed, but instead of holding that Sokoloff's claim "arises under" the Bankruptcy Code, held that Sokoloff's claim was within the bankruptcy court's "related to" jurisdiction. Pet. App. 6a. In so doing, the Ninth Circuit stated that "[a] bankruptcy court's 'related to' jurisdiction is very broad, 'including nearly every matter directly or indirectly related to the bankruptcy.'" *Id.* The court reasoned that bankruptcy courts may adjudicate claims *not* within the traditional definition of a bankruptcy court's "related to" jurisdiction because bankruptcy "jurisdiction also includes the district court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over all other claims that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." Pet. App. 6a (internal quotation marks omitted). The Ninth Circuit thus held that the bankruptcy court had "supplemental" jurisdiction to adjudicate and enter a final judgment on Sokoloff's claim. Pet. App. 1a-2a.

REASONS FOR GRANTING THE WRIT

Sasson correctly notes that the courts of appeals are intractably divided on the question whether bankruptcy courts have supplemental jurisdiction under 28 U.S.C. § 1367 to adjudicate claims that are not within the "related to" jurisdiction granted by Congress under the bankruptcy jurisdictional statutes. The Court's intervention is warranted, not only to resolve the split among the courts of appeals, but also because the decision below, in condoning the exercise of jurisdiction by bankruptcy courts that exceeds the jurisdiction granted to them by Congress under 28 U.S.C. §§ 1334 and 157, directly contravenes the constitutional principles espoused by this Court in *Northern*

Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982) (plurality), and adopted by Congress shortly thereafter in enacting sections 1334 and 157. Indeed, in affirming the bankruptcy court's entry of a final money judgment on a claim that is neither a "core" claim that arises under the Bankruptcy Code or arises in a case under the Code, nor "related to" Sasson's bankruptcy case or estate, the decision below completely unwinds the measures enacted by Congress in response to *Marathon*.

Moreover, the decision below renders superfluous the "related to" jurisdiction provided in sections 1334 and 157 -- which authorize bankruptcy courts to hear *only* those claims that have "some effect" on the bankruptcy estate -- because the supplemental jurisdiction provided in 28 U.S.C § 1367 and relied upon by the Ninth Circuit in the decision below is much broader than the grant of "related to" jurisdiction provided in section 1334(b). The decision below also permits the general supplemental jurisdiction statute, 28 U.S.C § 1367, to control the meaning of the specific bankruptcy jurisdiction statute, 28 U.S.C. § 1334, in violation of this Court's well-established maxims of statutory construction. For these reasons, the Court should grant certiorari to resolve this important question concerning the fundamental scope of bankruptcy jurisdiction.

A. The Ninth Circuit's Interpretation Of The Bankruptcy Jurisdiction Statutes Creates, Rather Than Avoids, Serious Constitutional Questions.

This Court has long directed that courts must follow the canon of statutory construction that, where possible, statutes should be read in a manner that avoids clashes with the Constitution. *See, e.g., Clark v. Benitez*, 543 U.S. 371, 380-81 (2005) ("[W]hen deciding which of two plausible statutory constructions to adopt, a court must consider the necessary consequences of its choice. If one of them would raise a multitude of constitutional problems, the other should prevail . . . ."); *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 545 (2001); *United States v. Security Indus. Bank*, 459 U.S. 70,

78 (1982); *Crowell* v. *Benson*, 285 U.S. 22, 62 (1932). This rule of construction "is a tool for choosing between competing plausible interpretations of statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts. The canon is thus a means of giving effect to congressional intent, not of subverting it." *Clark*, 543 U.S. at 381. The decision below plainly violates this rule by interpreting the bankruptcy jurisdictional statutes in a manner that *creates* a constitutional conflict where none need exist, and completely undercuts Congress's revision of the bankruptcy jurisdiction statutes, 28 U.S.C. §§ 1334 and 157, after *Marathon*.

Both before and after *Marathon*, Congress gave district courts "original but not exclusive jurisdiction of all civil proceedings *arising under* title 11, or *arising in* or *related to* cases under title 11." 28 U.S.C. § 1334(b) (emphasis supplied). In turn, Congress has constituted the federal bankruptcy courts as "units" of the district courts, 28 U.S.C. § 151, and has set forth their jurisdiction in 28 U.S.C. § 157. Under section 157(a), "[e]ach district court may provide that any or all cases under title 11 and any or all proceedings *arising under* title 11 or *arising in* or *related to* a case under title 11 shall be referred to the bankruptcy judges for the district." 28 U.S.C. § 157(a) (emphasis supplied). Following *Marathon*, however, exercise of the district courts' bankruptcy jurisdiction by the bankruptcy courts is specifically circumscribed by further provisions of section 157 precisely because, unlike district judges, bankruptcy judges are not constitutionally authorized to exercise the full judicial power of the United States, as they are not judges appointed under Article III of the Constitution.

In *Marathon*, the debtor commenced its bankruptcy case and sought to have the bankruptcy court fully and finally adjudicate a state law cause of action for breach of contract and warranty between the debtor and defendant Marathon Pipe Line. Under the bankruptcy jurisdiction provisions that pre-dated *Marathon*, the bankruptcy court had express statutory authorization to adjudicate the suit because the outcome of the suit would affect